

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GABRIEL SANTACRUZ,

Case No.: 2:23-cv-00258-APG-BNW

## Plaintiff

## **Order Denying Plaintiff's Motion for Injunctive Relief**

V.

[ECF No. 2-2]

CHARLES DANIELS, et al.,

## Defendants

Plaintiff Gabriel Santacruz is an inmate currently housed at Southern Desert Correctional (SDCC), a facility of the Nevada Department of Corrections (NDOC). Santacruz alleges suffers from neurological foot drop; claw toe; his right leg being shorter than his left leg; nerve damage pain in his leg, back, neck, and foot; chronic constipation; and paranoid schizophrenia. ECF No. 6 at 3. He claims that for “the past six years in SDCC [he] has been proper medical care,” and all his conditions have worsened and further injured him. *Id.* at asserts claims under the Eighth Amendment and the equal protection clause against s NDOC medical providers and an assistant warden.

Santacruz requests an injunction to “provide [him] with the medical care prescribed to [him] by the outside doctors, specialist” without further specifying what treatment he is seeking. ECF No. 2-2 at 5. His first amended complaint (FAC) states that he did not receive Linzess, a drug prescribed for his constipation, and that he has been denied corrective procedures for his leg length difference and foot drop. *See* ECF No. 6 at 3, 5. Construing his documents liberally, I presume this is the specific care that he requests. I deny these requests because he has not shown

1 irreparable harm if he does not receive Linzess, and because he has not shown that he is likely to  
 2 succeed on the merits of his leg or foot issues.

3       Santacruz also requests the defendants provide him with medical care that “conforms  
 4 with the actual free world standards” and is “compatible with the concept(s) of human dignity.”  
 5 ECF No. 2-2 at 5-6. I deny these requests because they are not narrowly tailored. Lastly,  
 6 Santacruz requests that the defendants “stop their overt discrimination(s) against plaintiff” based  
 7 on his disabilities. I deny this request because his FAC does not have a claim based on the  
 8 Americans with Disabilities Act (ADA), so he is unlikely to succeed on the merits of this claim.

9 **I. LEGAL STANDARDS**

10      **A. Injunctive Relief**

11       The legal standard for a temporary restraining order is substantially identical to the  
 12 standard for a preliminary injunction. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.,*  
 13 *Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a preliminary injunction, a plaintiff must  
 14 demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm,  
 15 (3) the balance of hardships favors the plaintiff, and (4) an injunction is in the public interest.  
 16 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, under the sliding  
 17 scale approach, the plaintiff must demonstrate (1) serious questions on the merits, (2) a  
 18 likelihood of irreparable harm, (3) the balance of hardships tips sharply in the plaintiff's favor,  
 19 and (4) an injunction is in the public interest. *All. For the Wild Rockies v. Cottrell*, 632 F.3d  
 20 1127, 1135 (9th Cir. 2011). Under either test, a preliminary injunction is “an extraordinary and  
 21 drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the  
 22 burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (simplified).  
 23 Mandatory injunctions that order a party to take specific action are “particularly disfavored, and

1 should not be issued unless the facts and law clearly favor the moving party.” *Anderson v. United*  
 2 *States*, 612 F.2d 1112, 1114 (9th Cir. 1979) (simplified).

3 The Prison Litigation Reform Act of 1995 (PLRA) further restricts the availability of  
 4 injunctive relief concerning prison conditions. *Armstrong v. Newsom*, 58 F.4th 1283, 1293 (9th  
 5 Cir. 2023). I cannot grant injunctive relief unless I find “that such relief is narrowly drawn,  
 6 extends no further than necessary to correct the violation of the Federal right, and is the least  
 7 intrusive means necessary to correct the violation of the Federal right.” *Id.* (quoting 18 U.S.C.  
 8 § 3626(a)(1)(A)).

9 **B. Eighth Amendment**

10 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and  
 11 “embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.”  
 12 *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quotation omitted). “It is settled law that deliberate  
 13 indifference to serious medical needs of prisoners violates the Eighth Amendment.” *Jackson v.*  
 14 *McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (citing *Estelle*, 429 U.S. at 104). “First, the plaintiff  
 15 must show a serious medical need by demonstrating that failure to treat a prisoner’s condition  
 16 could result in further significant injury or the unnecessary and wanton infliction of pain.” *Jett v.*  
 17 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quotation omitted). “Second, the plaintiff must  
 18 show the defendant’s response to the need was deliberately indifferent” by showing “(a) a  
 19 purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm  
 20 caused by the indifference.” *Id.*  
 21 “Indifference may appear when prison officials deny, delay or intentionally interfere with  
 22 medical treatment, or it may be shown by the way in which prison physicians provide medical  
 23 care.” *Id.* (quotation omitted). When a prisoner alleges that deliberate indifference is shown by

1 the delay of medical treatment, the prisoner must show that the delay led to further injury. *See*  
2 *Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (holding that  
3 "mere delay of surgery, without more, is insufficient to state a claim of deliberate medical  
4 indifference"). If the prison's medical staff is not competent to examine, diagnose, and treat  
5 inmates' medical problems, they must "refer prisoners to others who can." *Hoptowit v. Ray*, 682  
6 F.2d 1237, 1253 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472  
7 (1995). "A mere difference of medical opinion is insufficient, as a matter of law, to establish  
8 deliberate indifference." *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (simplified).  
9 "Rather, to prevail on a claim involving choices between alternative courses of treatment, a  
10 prisoner must show that the chosen course of treatment was medically unacceptable under the  
11 circumstances, and was chosen in conscious disregard of an excessive risk to the prisoner's  
12 health." *Id.* (simplified).

### 13      **C. Equal Protection**

14      The Equal Protection Clause of the Fourteenth Amendment is essentially a direction that  
15 all similarly situated persons be treated equally under the law. *City of Cleburne, Tex. v. Cleburne*  
16 *Living Ctr.*, 473 U.S. 432, 439 (1985). To state an equal protection claim, a plaintiff must allege  
17 facts demonstrating that the defendants acted with the intent and purpose to discriminate against  
18 him based upon membership in a protected class, or that the defendants purposefully treated him  
19 differently than similarly situated individuals without any rational basis for the disparate  
20 treatment. *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001); *see also Vill. of*  
21 *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). A plaintiff may assert an equal protection  
22 claims under a "class of one" theory, where the plaintiff alleges that he "has been intentionally  
23 treated differently from others similarly situated and that there is no rational basis for the

1 difference in treatment.” *Olech*, 528 U.S. at 564. A “class-of-one plaintiff must be similarly  
 2 situated to the proposed comparator in all material respects.” *SmileDirectClub, LLC v. Tippins*,  
 3 31 F.4th 1110, 1123 (9th Cir. 2022).

4 **II. DISCUSSION**

5 Santacruz contends the defendants have been deliberately indifferent to his serious  
 6 medical needs. He argues that his medical conditions and suffering were known to the  
 7 defendants because he reported his conditions upon entering NDOC custody and because he has  
 8 written numerous kites to the defendants. He argues that the lack of adequate treatment has  
 9 caused him extreme pain and that he could suffer the “complete loss of his foot or leg” if  
 10 professional care is not provided immediately. ECF No. 2-2 at 4. He alleges that he “was  
 11 prescribed a [sic] special surgeries/medical diets, and several medications to treat his numerous  
 12 illnesses after being diagnosed several years ago” but had “little to [no] success with receiving  
 13 any of the afore-stated” care. *Id.*

14 The defendants respond that Santacruz cannot establish a likelihood of success on the  
 15 merits for either of his claims. They argue his claims are barred by the two-year statute of  
 16 limitations; he has not shown deliberate indifference because his medical records show that he  
 17 receives extensive care; and he has not shown that the other inmates who allegedly received a  
 18 procedure that he was denied are similarly situated to him. They provide an exhibit containing  
 19 Santacruz’s “Relevant Medical Records” but do not provide any medical records after June 24,  
 20 2022.<sup>1</sup> *See* ECF Nos. 19-1; 17 at 11.

21  
 22 <sup>1</sup> The defendants provided over 600 pages of medical records in no discernable order.  
 23 Unexplained, unorganized exhibits do not assist me in resolving issues. The defendants also do  
 not explain why they did not provide records from after June 24, 2022, even though Santacruz  
 filed his complaint in this case in February 2023. *See* ECF Nos. 2, 4.

1       **A. Request for Medical Care Prescribed by Outside Doctors and Specialist**

2           Santacruz first requests that the defendants provide him with the care prescribed by “the  
 3 outside doctors” and “specialist.” ECF No. 2-2 at 5. He alleges that he was “prescribed specific  
 4 treatments and surgeries by medical doctors whom are specialist[s] in their [respective] fields,”  
 5 that this medical care is “necessary,” and defendants “have failed and or refused to provide” this  
 6 care. *Id.* at 7-8. He alleges that he could “suffer the complete loss of his foot or leg” if the  
 7 defendants fail to “take corrective medical measure[s] now.” *Id.* at 4. His motion does not name  
 8 the allegedly prescribed treatments, but based on the allegations in his FAC I infer that he wants  
 9 to receive 1) Linzess, a prescription drug, and 2) corrective procedures for the leg length  
 10 difference or foot drop.<sup>2</sup> *See* ECF No. 6 at 3, 5.

11       **1. Linzess**

12           Santacruz alleges that a specialist prescribed him Linzess “for his stomach problems,” but  
 13 defendant Betty Omandac denied him that drug “because ‘the state does not provide that.’” ECF  
 14 No. 6 at 3. The defendants argue that Santacruz has not been prescribed Linzess recently, and  
 15 that he has requested and taken other constipation remedies. ECF No. 17 at 8.

16           Santacruz’s medical records show that he kited about stomach pain and chronic  
 17 constipation in September 2017 and March 2018, and specifically noted that his current  
 18 medication, including milk of magnesia, does not always help. ECF No. 19-1 at 174, 138. In  
 19 May 2018, he had a diagnostic exam for his constipation and the result was an “[u]nremarkable  
 20 abdomen radiograph.” *Id.* at 601. In March 2019, he was referred to a “GI specialist” after  
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22 <sup>2</sup> Because Santacruz was pro se at the time he filed his motion and FAC, I construe his  
 23 documents liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). This rule is “particularly  
 important in civil rights cases.” *Pouncil v. Tilton*, 704 F.3d 568, 575 (9th Cir. 2012) (quotation  
 omitted).

1 complaints of diarrhea and constipation. The specialist diagnosed him with altered bowel  
2 function and ordered a colonoscopy, which he received in August 2019. *Id.* at 397, 400, 405,  
3 491. At the follow up appointment after the colonoscopy on September 3, 2019, the outside  
4 gastroenterology doctor prescribed Linzess for 30 days to treat the altered bowel function. *Id.* at  
5 474-75, 477, 480. Although the medical record is not entirely clear, it appears that an NDOC  
6 doctor requested Linzess for Santacruz as a non-formulary drug request, but a committee denied  
7 it and an NDOC doctor prescribed him “MOM” instead. *See id.* at 476, 544. He continued to  
8 receive milk of magnesia prescriptions through 2020 and 2021. *See, e.g., id.* at 289, 296, 385,  
9 387.

10 I am concerned by the fact that NDOC referred Santacruz to an outside specialist but then  
11 denied him the treatment prescribed by that specialist. The defendants have not explained why  
12 the alternative drug is medically acceptable under the circumstances. However, I deny injunctive  
13 relief as to receiving Linzess because Santacruz has not alleged or shown that he will suffer  
14 irreparable harm if he does not receive it. He alleged only extreme back and neck pain and that  
15 he could suffer the loss of his foot or leg, whereas Linzess was prescribed by a gastroenterologist  
16 to treat altered bowel function.

17 ***2. Leg Length Difference or Foot Drop***

18 Santacruz alleges that he has written many kites since 2017 to “correct [the] difference  
19 between [his] two legs, to no avail” but “6 years later . . . [he] was finally referred to [a]  
20 specialist who is doing the minimum.” ECF No. 6 at 5. He knows of “two people with  
21 neurological foot drop like [him]” who “were treated at a reasonable time.” *Id.* Santacruz alleges  
22 that “[t]hey received their shoes, etc.” *Id.* He alleges that defendant Omandac “denied [him] . . .  
23 for this procedure while she approved” another inmate’s procedure. *Id.* Santacruz does not

1 “understand why [he’s] being denied treatment afforded to other inmates.” *Id.* He claims that if  
2 he was afforded that treatment, “it would have corrected the length issue and the foot drop issue,  
3 therefore preventing back and neck damage” and other pain. *Id.* The defendants argue that  
4 though they cannot disclose the health information of other inmates, it is likely that Santacruz’s  
5 medical circumstances are different than those of the other inmates. ECF No. 17 at 9. The  
6 defendants also argue that Santacruz’s neurological foot drop is “self-diagnosed.” *Id.* at 2, 8.

7 It is unclear why the defendants refer to Santacruz’s foot drop as self-diagnosed. His  
8 medical records show that many NDOC medical providers have recognized that Santacruz has a  
9 foot drop and nerve damage. *See, e.g.*, ECF No. 19-1 at 399, 444, 462, 465, 466, 485. At a  
10 previous NDOC facility, doctors prescribed and Santacruz received ankle braces and special  
11 shoes from an outside vendor for his foot drop. *Id.* at 443, 465, 466. When Santacruz was  
12 transferred to SDCC in January 2017, he had a brace, special shoes, and “foot/ankle support” as  
13 medical devices. *Id.* at 462. At SDCC, in April 2017, a doctor again prescribed him an ankle  
14 brace and specialty shoes for his foot drop. *Id.* at 444. Santacruz received outside-vendor shoes  
15 in July 2017. *Id.* at 154, 460. In February 2018, a doctor prescribed and Santacruz received a  
16 cane in response to his complaints of pain and difficulty walking due to his leg length difference.  
17 *Id.* at 461, 525. In September 2020, a doctor conducted a diagnostic exam of his spine and found  
18 that “alignment is within normal limits.” *Id.* at 599. In December 2021, a doctor ordered that it  
19 was “medically approved [for Santacruz] to obtain outside vendor shoes” because “RLE is  
20 shorter than LLE” and “foot drop.” *Id.* at 450. Santacruz received another pair of outside-vendor  
21 shoes in December 2021. *Id.* at 449, 514. In addition, between 2017 and 2020 Santacruz  
22 regularly received “IBU pain pack” prescriptions. *Id.* at 289, 297, 333, 338.

23

1        Nevertheless, it is unlikely that Santacruz can show deliberate indifference as to his leg  
2 length difference or foot drop. Multiple medical providers have seen Santacruz for this condition  
3 and have prescribed him foot and ankle braces, special shoes, and a cane, but not a surgical  
4 procedure. He has not pointed to any evidence that these treatment methods are medically  
5 unacceptable under the circumstances. Therefore, Santacruz is unlikely to show that the  
6 defendants failing to provide a corrective procedure is medically unacceptable, rather than a  
7 mere difference of medical opinion.<sup>3</sup>

8        Santacruz has also not shown a likelihood of success on his equal protection claim.  
9 Because Santacruz does not allege that he is part of a protected class, I apply the “class of one”  
10 rule. Santacruz does not allege what treatments or procedures the other inmates received except  
11 that they “received their shoes, etc.” ECF No. 6 at 5. However, Santacruz also received outside-  
12 vendor shoes, as well as braces, a cane, a diagnostic study of his neck and back, and IBU pain  
13 packs. Santacruz does not allege with specificity how long it took the other inmates to be treated  
14 compared to how long it took him to be treated. Nor does he allege that the other two inmates  
15 have a leg length issue. Thus, Santacruz has not shown that he is likely to succeed in showing  
16 that the other inmates are similarly situated to him in all material respects or that he was treated  
17 differently.

18        It appears unlikely for Santacruz to succeed on either his Eighth Amendment or equal  
19 protection claims, so I deny his request for injunctive relief as to receiving corrective procedures  
20 for his leg length issue or foot drop.

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<sup>3</sup> The medical records submitted by the defendants may not be complete because they have not  
23 provided any records after June 24, 2022. If evidence exists that supports Santacruz’s allegation  
that he was prescribed specific procedures that have been denied or delayed, he may file another  
properly supported motion for injunctive relief.

## **B. Requests for Adequate Medical Care**

2 Santacruz also requests injunctive relief to have defendants “conform with the actual free  
3 world standards of medical care” and “provide [him] with medical care compatible with the  
4 concepts of human dignity.” ECF No. 2-2 at 5-6. These requests are not narrowly drawn, so I  
5 deny these generalized requests based on the standard set by the PLRA.

### **C. Request to Stop Discrimination**

7 Santacruz also requests injunctive relief to have the defendants “stop their overt  
8 discrimination against [him]” as a disabled person in violation of the ADA. ECF No. 2-2 at 5.  
9 However, Santacruz’s original ADA claim was dismissed. ECF No. 5 at 9. He did not assert an  
10 ADA or disability discrimination claim in his FAC, which is now his operative complaint. *See*  
11 ECF Nos. 6; 7 at 8. Therefore, there is no likelihood of success on the merits of an ADA claim  
12 so I deny this request.

## 13 | V. CONCLUSION

14 I THEREFORE ORDER that plaintiff Santacruz's motion for injunctive relief  
15 (ECF No. 2-2) is DENIED.

16 DATED this 24th day of January, 2024.

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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE